BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RAYMOND LEWIS)

In the Matter of the Appeal of)
)
MARY LUCILE LEWIS)

Appearances:

For Appellants: R. W. Harthorn,' Public Accountant.

For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

These appeals are made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Raymond Lewis to a proposed assessment of additional tax in the amount of $267.12 and in overruling the protest of Mary Lucile Lewis to a proposed assessment of additional tax of $279.12, each of said proposed assessments being for the taxable year ended December 31, 1935.

Appellants received certain dividends in the amount of $2,500 from Macco-Lewis, Inc., payment thereof being made on January 15, 1935. Although they had originally contended that the dividends accrued in 1934, their returns being filed on the accrual basis, Appellants conceded at the hearing of the appeals that these dividends were income for the year 1935.

The only remaining issue is whether the action of the Commissioner in disallowing a deduction of $16,500 as a loss was correct. Raymond Lewis had executed a note in that amount in favor of the Columbia Casualty Company in the year 1932. It is' claimed by Appellants, however, that this note was simply a memorandum for accounting purposes and was never intended to be paid in full but was to be adjusted or cancelled upon the completion of a contract between Raymond Lewis and the Company under which Mr. Lewis had agreed to complete a certain construction job. The Columbia Casualty Company brought suit against Raymond Lewis and obtained a judgment in 1935 from which an appeal was taken. This appeal did not become final until 1936. Appellant did not secure a stay of execution and during 1935 the judgment was collected by the levy of an execution.

There may be some question as to whether the $16,500 is deductible as a loss. It appears that it was deducted as8 business expense in Appellant's federal income tax returns for 1932. Wholly apart from that matter? however, the amount is not in our opinion deductible as a loss in 1935. Appellants were on an accrual basis. In the absence of exceptional circumstances, a deduction may be taken in a situation like that involved herein only in the year in which the liability becomes fixed by a final judgment. Lucas v. American Code Co., 280 U.S. 445; Consolidated Tea Co. v. Bowers, 19 Fed. (2d) 382. If the judgment had been reversed on appeal the Appellants would have ha'd the right to recover from the Columbia Casualty Company the amount which had been collected pursuant to the levy of execution and undoubtedly could have collected the sum, no question having been raised as to the solvency of that Company. Since the question of Appellant's liability was not finally adjudicated until 1936, the action of the Commissioner in disallowing the deduction in the Appellants' returns of income for 1935 must be upheld.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of Raymond Lewis and Mary Lucile Lewis to proposed assessments of additional taxes under the Personal Income Tax Act for the taxable year ended December 31, 1935, against Raymond Lewis in the amount of $26'7.12 and against Mary Lucile Lewis in the amount of $279.12 be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1944, by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
Harry B. Riley, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary